IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5619 OF 1997

1. Shri Sayaji Maruti Parge

2. Shri Jagannath Maruti Parge
(Karta of HUF)

3. Shri Vishvanath S. Parge

All adult, Occ: Agri., residing at Shiroli, Taluka Khed, District: Pune. .... Petitioners

- Versus -

1. The State of Maharashtra

2. The Special Land Acquisition Officer No.24, office at Collector Office Compound, Pune - 411 001. .... Respondents

Sarvasri M.S. Lagu i/b R.S. Apte for the Petitioners.

Ms S.S. Bhende, Asst. Government Pleader, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
V.M. KANADE, JJ.

DATED: SEPTEMBER 14, 2005

ORAL JUDGMENT (Per V.M.Kanade, J.):

1. The petitioners are challenging the acquisition proceedings initiated by respondent No.2 under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986, hereinafter referred to as "the Rehabilitation Act of 1986" r/w the provisions of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act".

2. The brief facts which are relevant for the purpose of deciding this petition are as follows:-

3. In the petition a specific averment is made by the petitioners that the respondent No.2 had initiated the acquisition proceedings in respect of their land under the provisions of the said Act and the Maharashtra Resettlement of Project Displaced Persons Act, 1976, hereinafter referred to as the "Resettlement Act of 1976". It was averred in the petition that under the said Act the land of the petitioners could not have been acquired as under Schedule I, Part II of the said Act if the net holding is less than 8 acres, in that event the Government does not have any right to acquire the land of such person. In view of this averment and since no instructions were received by the A.G.P. appearing in the matter from the respondents, by order dated 3-3-1999 the petition was admitted and in fact the following order was passed:

> "Heard Advocates for the parties. By order dated 16/9/98, petition was adjourned on the request made by learned A.G.P. by way of last adjournment. It was made clear that no further adjournment will be granted. Inspite of this, the respondents have not cared to

file affidavit in reply. Hence rule.

Interim relief to continue."

4. The grievance of the petitioners, therefore, in this petition is that since the holding of the petitioners is less than 8 acres, their land is not liable to be acquired.

5. It is not possible to accept the contention raised by the learned counsel appearing on behalf of the petitioners. On perusal of the award, which is annexed as Exhibit-C on page 23 of this petition, it can be seen that the acquisition proceedings were initiated as a result of the letter dated 12-3-1987 which was issued by the Deputy Director of Resettlement (Land), Pune and the Notification under Section 4 of the said Act was issued on 15-10-1990. From the aforesaid facts, it is clear that by the time the acquisition proceedings were initiated in the present case, the Resettlement Act of 1976 stood repealed by the Rehabilitation Act of 1986. The acquisition proceedings, therefore, have been initiated under the Resettlement Act of 1986 under Schedule I, Part II wherein it is specified that a person whose land was less than 1 hectare and 61 ares cannot be acquired. Thus in the present case, since 1986 the Rehabilitation Act of 1986 is applicable and the slab which was initially 8 acres under the Resettlement Act of 1976 has been reduced to 4 acres or

1 hectare and 61 ares. The land of the petitioners, even after the deduction as has been alleged by them, is taken into consideration is above 4 acres and, therefore, the contention of the petitioners cannot be accepted.

6. In the result, there is no merit in the submission of the learned Advocate appearing for the petitioners. The petition is dismissed. Interim relief is vacated.

The rule is discharged with no order as to costs.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**